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WJB-TV FT. PIERCE LIMITED PARTNERSHIP

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June 14, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**VIA FEDERAL EXPRESS**Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: MM Docket No: 93-106

Dear Ms. Searcy:

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Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

RECEIVED

JUN 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:

Amendment of Part 74 of the
Commission's Rules Governing
Use of the Frequencies in the
Instructional Television Fixed
Service

MM Docket No. 93-106**COMMENTS OF WJB-TV LIMITED PARTNERSHIP**

In its Notice of Proposed Rulemaking in MM Docket No. 93-106, released on April 26, 1993 (the "Notice"), the Commission sought comment on whether licensees should be permitted to "channel load" all of their educational programming into less than the full block of Instructional Television Fixed Service ("ITFS") channels to which they are licensed; that is, whether they should be allowed to transmit or load all of their educational programming on one (or more) channels, as opposed to having to actually utilize all four

I. BACKGROUND

WJB-TV Limited Partnership is the general partner of the entity that owns and operates a thirty-channel wireless cable television system which serves over 6500 subscribers in Ft. Pierce, Florida.² It is also the general partner of entities that are developing similar systems in other markets, including a system that expects to begin operations in Melbourne, Florida this fall.

Like most wireless cable television entrepreneurs, WJB is dependent upon partnerships with the local educational community. Aside from the obvious benefit of increasing its system's channel capacity, without which it simply could not provide a competitive product, WJB has discovered that there is another important benefit from these partnerships; the programming of the educational entities is sought by many viewers and is thus valuable to the system and to the general public. For example, in Ft. Pierce, the local school board produces an after-school television program that is popular with many of its students. Consequently, WJB is an enthusiastic advocate of the benefits of ITFS partnerships.

These arrangements have benefitted the educational community as well. For example, WJB has executed excess capacity lease agreements covering a total of forty ITFS channels in two markets; the lessors include the University of Central Florida, a state university that serves over 22,000 students; Indian River Community College, a state community college that serves

² This system does business under the name of "Coastal Wireless Cable Television."

approximately 48,000 students on five (5) campuses; Brevard Community College, a state community college that serves over 13,000 students on four (4) campuses; and the School Board of St. Lucie County, which serves thousands of public school students in the Ft. Pierce community. Pursuant to their agreements with WJB, these entities have received or expect to receive royalty payments, grants, equipment, programming assistance, technical advice and/or other benefits. Because of the financial crises that currently faces so many educators, most of these entities simply could not afford to offer ITFS programming to their students without WJB's assistance.

WJB's lessors illustrate the importance of ITFS channels, and of lease agreements to support these channels, to educational entities. For example, the University of Central Florida ("UCF") is one of nine (9) state-supported four-year universities in the state of Florida, each of which is expected to meet the educational needs of students from a wide geographical area. One of the areas which UCF is expected to serve is Melbourne. However, because Melbourne is approximately sixty (60) miles from the UCF campus, many prospective students in the community are unable or unwilling to take advantage of UCF's programs. However, through the use of ITFS and with the assistance of WJB, the University expects to begin providing its programming to thirteen (13) sites in Melbourne, where these students will be able to earn credit towards their college degrees without leaving the community. This will

able to offer its classes to significantly more students at little incremental cost.

WJB has no desire to alter the mutually-beneficial relationship that exists between educators and the wireless cable industry. Its comments pertain solely to the "channel loading" proposal, an issue that should not adversely affect ITFS licensees, their educational programs, or their students. In fact, channel loading may be beneficial to ITFS providers as savings realized by wireless operators from avoiding the expense of channel mapping may be used to develop additional markets and assist in the development of more ITFS stations.

II. IN GENERAL, WJB SUPPORTS THE CONCEPTS PROPOSED IN THE NOTICE

A. Channel loading typically has the same effect as the channel mapping technology employed today.

It is worth emphasizing that the Commission has authorized the use of channel mapping technology for nearly two years, pursuant to Wireless Cable Order Recon., 6 F.C.C Rcd. 6764 (1991). WJB believes that this decision was one of many by the Commission that has contributed to the growth of the wireless cable industry and, in turn, spawned the creation of additional partnerships with the educational community.³

³ WJB notes that from 1991 to 1992, the number of ITFS applications that were filed nearly doubled, growing from 454 to 878. See Notice of Proposed Rulemaking in MM Docket No. 93-24, FCC Rcd. (released February 25, 1993). Clearly, a great portion of this growth was attributable to the Commission's efforts to foster this service and the development of additional markets by wireless operators which have been encouraged by favorable Commission policy. As a result, the number of students that have

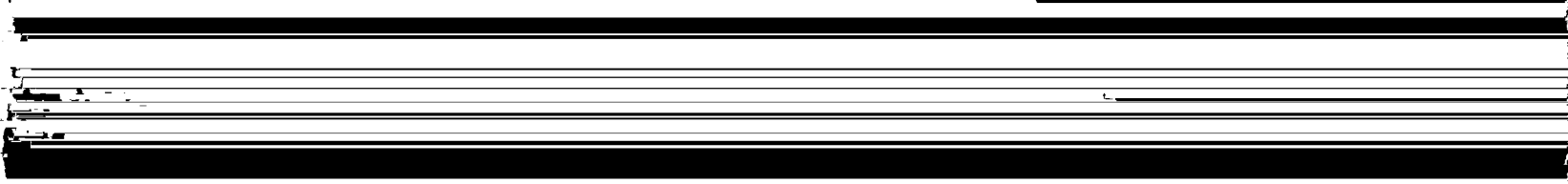
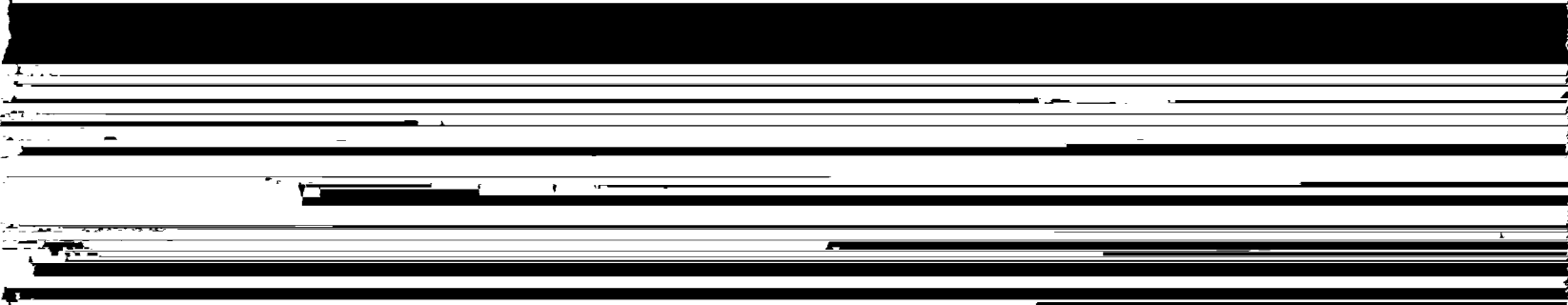
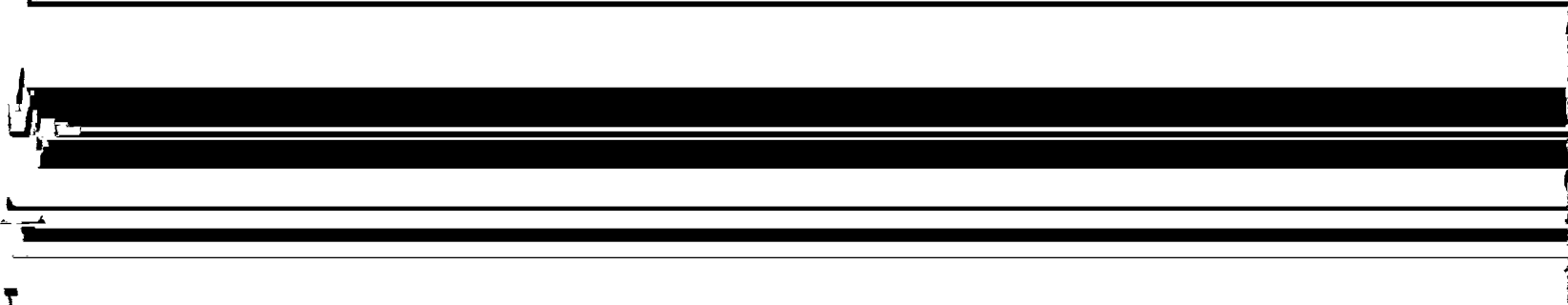
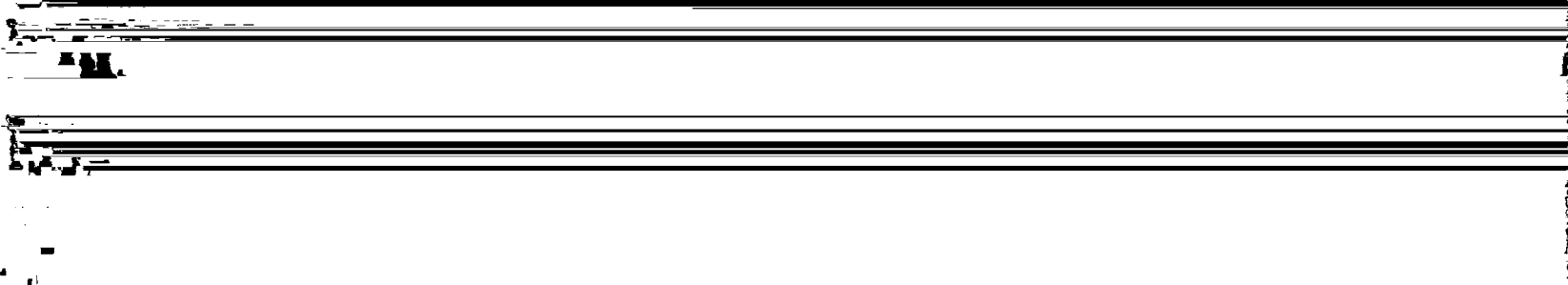
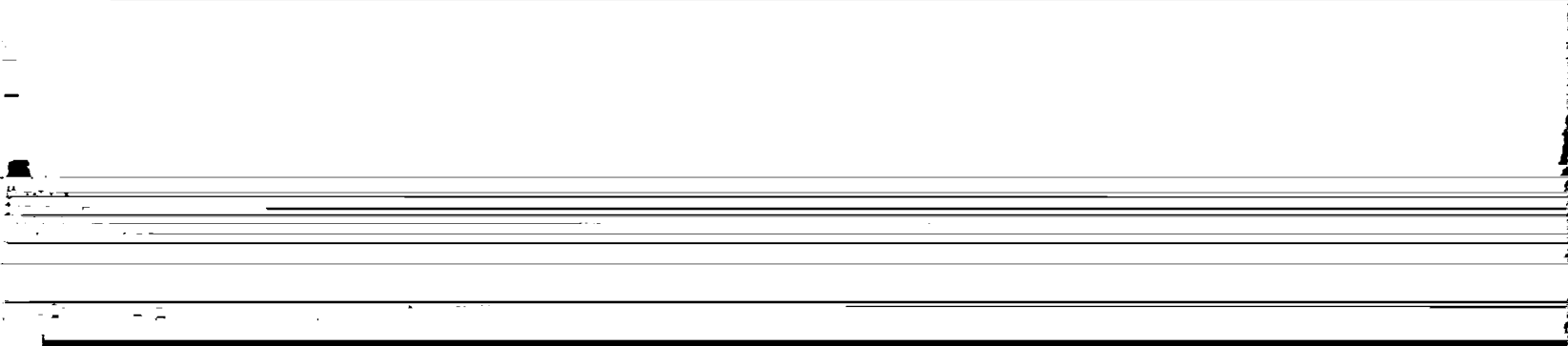
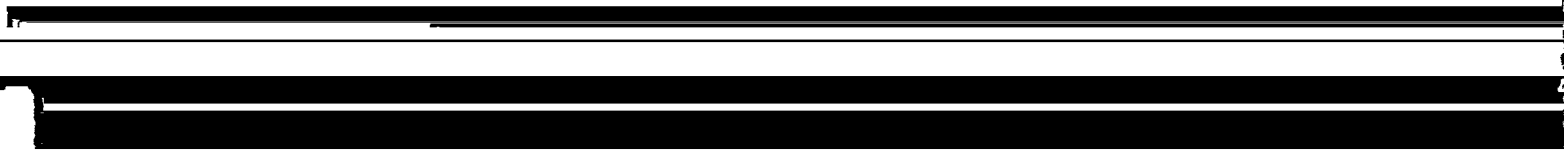
WJB is not aware of any adverse consequences that the channel mapping decision has caused to the educational community. In fact, more educational users than ever are now enjoying the benefits of ITFS. Consequently, given the track record of channel mapping, WJB does not expect channel loading to prove detrimental to the educational community.

The advent of channel mapping has apparently raised some concerns from educators. Perhaps the most significant of these is that the technology "precludes the simultaneous use of ITFS channels for instructional use". Notice at paragraph 12. This is in fact not always the case; several of WJB's lessors sought and received the contractual right to simultaneously use more than one of their channels should their educational needs require such usage. In these cases, channel loading, if adopted, will be tailored in accordance with those rights.

Some entities believe that the Commission should dictate that licensees have an absolute right to recapture simultaneous channel usage, even if such usage is not agreed to. WJB disagrees, believing that the issue is a matter that should be addressed by contract between the parties. Entities that need or desire this right can simply insist upon it, in the same fashion as they negotiate for royalties, equipment grants, and technical assistance. Licensees that wish to use channels simultaneously can enter into part-time agreements, or alternatively, can simply elect

not to enter into any agreement at all. Those that desire the

right to simultaneous usage in the future can simply enter into short-term contracts, specifying an expiration date before the date of the anticipated simultaneous usage. As the Notice points out



commercial programming." Id. Again, WJB believes that this matter should be left up to the contract between the parties. However, common sense dictates that if a smaller number of channels are "freed up", the compensation that operators will be willing to pay for those channels will likewise be smaller.

The Notice also asks whether the Commission should require that a specified number of channels of the required programming hours be scheduled "during specific times of the day, such as between 8:00 a.m. and 10 p.m., Monday through Saturday." Again, WJB disagrees with this proposal. WJB is aware that many ITFS channels reach students who hold full-time jobs; it may be that because of the work schedules of those persons, it would be more convenient for them to take classes at un-traditional times, such as in the early-morning hours, before they go to work. Perhaps some of these students would prefer week-end classes. Because educators must be given the flexibility to meet the demands of these students, WJB cannot agree with this proposal. The goal should be to make educational opportunities as plentiful and flexible as possible and thereby improve the educational level of all citizens. Consequently, any rule or policy that tends to restrict demand and make access to educational programming more limited should be avoided. Channel loading will, in WJB's judgment, continue the march toward making educational programming more widely available.

The Notice also asks whether a comparative advantage in mutually-exclusive cases should be awarded to applicants who

refrain from the use of channel mapping or channel loading. Id. WJB disagrees with this proposal, in large part because it establishes that entities that lease excess capacity will be looked upon less favorably by the Commission than entities that do not. WJB can think of no rational basis for this distinction; indeed, a licensee should not be rewarded for allowing its unused capacity to lay idle, as opposed to leasing it in exchange for compensation which can be used to support the station. Furthermore, entities that propose to use substantially all of their capacity for formal educational programming already receive a priority under the current rules for comparing mutually-exclusive applications. See Section 74.913(b)(4) of the Commission's Rules.

C. The Commission should require a "heightened demonstration of bona fide educational intent", as some educators recommend

It should be apparent by now that many conflicts arising in the allocation of ITFS spectrum have been caused by the activities of certain commercial entities and the educational entities that they often secure to apply for spectrum. Indeed, judging by the myriad of Petitions to Deny that have been filed against these entities, it appears that many of the underlying educators are hapless pawns, motivated by the promise of royalty payments but unfamiliar with the Commission's rules and uninterested in really utilizing ITFS channel capacity.

WJB enthusiastically endorses the idea of scrutinizing ITFS applications to eliminate those whose proposals do not merit

the award of licenses. In particular, those submitting cookie-cutter applications and those submitted by unqualified entities should be promptly eliminated. Furthermore, the Commission should take steps to sanction those who proffer such applications.

D. While compression technology offers great potential, great care should be taken in assessing when its implementation will be "feasible"

As a final matter, WJB would like to address the issue of compression technology. Obviously, everyone, including educational entities, wireless cable operators, and the Commission, looks forward to the day when more programs can be transmitted over the existing ITFS channels. This technology will help to ensure that sufficient spectrum exists for all who desire its use.





WJB's concern is that in its zeal to usher in the new technology, the Commission not unduly restrict the time period during which channel loading may be utilized. Specifically, the Notice refers to a "temporary period" of between three and five years, after which a determination will be made as to whether the use of compression technology has become "feasible." Notice at Paragraph 16. It is the definition of the word "feasible" that concerns WJB.

The wireless cable industry is working diligently to develop and implement compression technology. WJB is one of five operators within the industry that has banded together to create the "Wireless Cable Research and Development Center", one of the primary purposes of which is to research and develop compression

technology. WJB believes that its substantial investment in this project will help to assure that this technology becomes a reality.

WJB cautions, however, that even when the new technology is developed, it may take a period of time, perhaps even several years, to implement it. It is likely that adoption of, or conversion to, compression technology will require changes to the physical facilities by which subscribers are served. Aside from the substantial costs that are likely to be entailed, the process will probably prove to be a slow and expensive one, especially for older systems with large subscriber bases. For this reason, and because of the inevitable uncertainties that lie ahead, WJB urges the Commission to ensure that the "temporary period" covers a sufficient period of time to allow introduction and implementation of the new technology on a reasonable and cost-effective basis to all affected users. The better course is to allow channel loading to continue to be used until a particular system has converted to compression technology. The forces of competition, coupled with the efficient use of capital, will drive the wireless operator to transition to compression technology as soon as reasonable. As an operator makes this transition, the rules could legitimately require that the ITFS provider realize a proportionate portion of the increased channel capacity. This appears to WJB to be fair and reasonable, allowing everyone to benefit from compression technology on a proportional basis and at a time when the costs have been determined to be justified, not just technically feasible.

The compression issue does raise one final point. If in fact ten-to-one compression becomes a reality, as the Notice at Paragraph 13 suggests, a wireless cable operator would be able to



market until it is both technically and financially feasible to
transition to ~~commercial~~ technology. It simply does not make